IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 514 of 1993

MADAN LAL
V/S
STATE & ORS

Mr. MR SINGHVI) for the petitioner
Mr. Girish Joshi)
Mr. S.N.Tiwari, Dy.G A, for the respondents

Date of Order : 21.4.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

The controversy involved in the present case is very short, in as much as, earlier, a judgment had been passed by this Court on 24.4.1992, in the writ of the petitioner, being S.B. Civil Writ Petition No.93/1990. Thereafter, some inter-departmental correspondence ensued, and vide Annexure-4, it was found, that the petitioner may be paid emoluments of the post of Clerk during the period he had worked as such, and the petitioner would however continue as Helper. It was also directed that if the directions are violated in future, excess payment shall be recovered from the addressee. This has given rise to the present writ petition.

A look at Annexure-1 shows, that the petitioner was appointed as Helper, on work-charge basis, and was declared semi-permanent on 9.7.1986, with effect from 1.4.1985. The

case of the petitioner was, that he is qualified to hold the post of LDC/Store Munshi, and he is discharging functions of LDC/Store Munshi since the date of initial appointment, and therefore, claimed to be regularised on the post of LDC, with effect from the date of initial appointment. Other contentions were also raised. Allegations of the petitioner were controverted, by denying the allegation of the petitioner discharging the functions of the post of LDC/Store Munshi, and orders passed regarding regularisation of other persons were contended to be wrong, and having been withdrawn. This Court found, that the question as to whether the petitioner was discharging the duties of the post of LDC from the date of initial appointment, or from a later date, is a disputed question of fact, and no relief on that count could be granted to the petitioner for regularisation and fixation in the regular pay scale. Thereafter, this Court proceeded on the admitted facts, that the petitioner holds the requisite qualification, and is on the work-charge establishment for a pretty long time, and according to the learned counsel for the petitioner, the petitioner is entitled to be considered for absorption on the post of LDC in regular cadre, as a result of further proviso to clause (b) of sub-rule (1) of Rule 7 of the Rajasthan Subordinate Office Ministerial Staff Rules, 1957, which proviso was quoted. Then, reliance was also placed on earlier judgment of this Court, in Naga Ram Choudhary Vs. State of Raj. and

others (SBCWP No.4501/90 decided on 16.1.1992) and then, the following direction was given:

> "Petition is accordingly disposed-off in terms of the decision given in Naga Ram's case (supra) with a direction to the respondents to consider the case of the petitioner for appointment on the post of L.D.C. in pursuance of the rules as amended by notification dated 18.12.1989 as he fulfils all the conditions laid down therein within three months from today. Petitioner will be placed in the regular pay scale with effect from the date his services are taken on the regular cadre in terms of the aforesaid rules. There will be no order as to costs."

A combined reading of the newly added proviso, and the directions given in Annexure-1, shows, that suitability of the petitioner was required to be adjudged by the Committee, for absorption against 50% of the total vacant posts of LDC as on 1.4.1988, and he could be made regular, after passing of the typing test, to be held by the competent authority, at a speed prescribed in these rule, within a period of one year. Notwithstanding this order dated 24.4.1992 having been passed, compliance was not made, rather communication Annexure-4 happened to be issued, therefore, the present writ has been filed.

Reply was filed in this writ petition, contending inter alia, that suitability has to be adjudged, and availability of post on 1.4.1988 has to be seen, and that rule also provides, that the person must be in continuous service for two years as on 1.4.1988, while the petitioner was neither appointed as LDC, nor did he put in continuous service for two years and while employed as work-charged, he did not work as LDC, and therefore, he could not be

granted any relief. The other objection taken is, that there was no post of LDC, which could be filled in by the amended rules, nor the petitioner was suitable for application of the amended rule. Regarding Annexure-1, it was contended, that the requirement of compliance does not give rise to right of the petitioner to approach this Court again, as a casual employee, while discharging duties on the post, does not become entitled for that post, and that the case of the petitioner was not found suitable within the amended rules. Thus, the claim of the petitioner was controverted.

This writ was admitted on 28.1.1993, and the above reply was filed on 9.3.1995. The matter appears to have come up before the Court for hearing on 6.9.2005, and that day, it appears, that this Court construed the order Annexure-1 to the effect, that the direction given by the Court has not been complied with, inasmuch as instead of considering the candidature of the petitioner for regularisation of his service as LDC in accordance with the directions given by this Court, only allowed the difference of pay being between the post of Helper and that of LDC. Thereupon, the present writ petition was filed and reply filed in this writ petition was taken to be not satisfactory, as it was observed, that it does not give any reasons, as to why they have not complied with the directions given by this Court, and therefore,respondents were directed to consider candidature of the petitioner for

regularisation in the light of the directions given on 24.4.1992, and the entire exercise was directed to be made within 45 days.

It is a different story, that the direction given in the order dated 24.4.1992 was, to consider the candidature of the petitioner for appointment on the post of LDC in pursuance of the Rules, as amended vide notification dated 18.12.1989, and that notification unequivocally provided that the absorption is to be made once only, on the post of LDC, against the vacant post of LDC in the respective department, to the extent of 50% of the total vacant posts of LDC on 1.4.1988. There is no averment in the writ petition, that as on 1.4.1988, any post of LDC within 50% limit was available with the respondents, whereon the petitioner could be absorbed, nor any material has been placed on record about the petitioner having pointed out this fact to the respondents, while in para 4 of the reply, the categorical stand of the respondents is, that there was no post of LDC, which could be filled in by the amended rules. Be that as it may, it appears that while considering the matter on 6.9.2005, this Court over-reacted to the situation, and apart from the written directions given in the order, something more appears to have transpired. Be that as it may.

The respondents have placed on record compliance report dated 29.10.2005 whereby subject to the final decision of the present writ petition, the petitioner is

appointed as LDC w.e.f. 24.4.1992, and fixed at the minimum of the pay scale of Rs.950-1680, and that he will have to pass the typing test within a period of one year, and he has been posted on the vacant post lying with the Assistant Engineer, P.H.E.D. On filing of this report, an additional affidavit has been filed by the petitioner, to the effect, that the order has been passed in compliance of the order dated 6.9.2005, but then, no fixation of pay has been made, nor payment of the difference of salary has been made to the petitioner.

In my view, now at this stage, without going into the controversy, as to whether the petitioner has at all been adjudged by the Committee, contemplated by the Rules, as quoted in Annexure-1, or as to whether as on 1.4.1988, any vacancy was available out of the 50% posts of LDC, wherein the petitioner could be regularised; in view of the order dated 29.10.2005, it is directed, that if the petitioner passes the typing test within a period of one year, his fixation of pay shall be made in accordance with order dated 29.10.2005, appointing him as LDC w.e.f. 24.4.1992, and arrears shall be paid. However, if the petitioner fails to pass the typing test within one year, he obviously will go back as Helper.

The writ petition is accordingly disposed of, as indicated above.

(N P GUPTA),J.

Gopal